

**REMARKS**

Claims 1,2, 17,20,22-25 and 34-38 are pending in the case.

Applicants Response and Amendment of claims to the final action, mailed 12/2/2003 was not deemed persuasive to overcome the rejection of claims. An advisory action was mailed, 2/9/2004 indicating that Applicants amendments would be entered into the record (see paragraph 7 of the advisory action).

Applicants have filed herewith a Request for Continued Examination (RCE) accompanied by the appropriate fee and respectfully request reconsideration of the claims in view of the following arguments.

***Claim Rejections – 35 USC § 112 – Box 5 of the Advisory Action***

Claims 1,2 17,20, 22-25 and 34-38 remain rejected under 35 USC § 112, first paragraph for lack of written description. Applicants traverse.

The Examiner states in his comments under Box 5 of the Advisory Action: “The invention as claimed reads upon a nucleotide sequence obtained from any organism that is essential for its replication”. Applicants submit this statement is not consistent with the claims as now amended. Claim 1 reads on a nucleotide sequence that is; (i) essential for the replication of a plasmid and (ii) has some homology to the nucleic acid sequence encoding SEQ ID NO:2. The nucleotide sequence in question is not essential for the replication of a microorganism. It is essential for the replication of the plasmid in the microorganism. This fact is well supported in the specification and examples. As such, the recitation of the limitation “plasmid replication protein” in claim 1 clearly distinguishes this nucleotide sequence from a host of other sequences, as only those sequences encoding proteins that govern plasmid replication are within the class.

The examiner additionally states: “The specification as filed fails to disclose any variant of SEQ ID NO:2 that one skilled in the art would be able to identify by any structural and physical characteristics”. Applicants submit variants of SEQ ID NO:2 could be identified by the skilled person on the basis of structural physical characteristics described in the specification. Specifically, example 5 teaches that there are 5 conserved motifs present in the instant SEQ ID NO:2, which share commonality with other replication proteins. These motifs are specifically illustrated in figure 4a.

As the Examiner has reiterated, a test of the sufficiency of the written description requirement is whether the skilled person would reasonably conclude that the applicant was in possession of the claimed genus. The Examiner suggests the present description fails this test because “...a description of only one member of this genus is not representative of the variants of the genus...”. Applicants submit that more than one member has been described. That description includes the present SEQ ID NO:2 as well

as variants having the described 5 motifs, all of which would be encompassed by the stringent hybridization conditions recited in Claim 1.

Applicants submit that the claims meet all the requirements of 35 USC § 112 first paragraph and respectfully request removal of all rejections and reconsideration of the claims.

In the event Applicants arguments contained herein are not found persuasive to put the case in condition for allowance, Applicants respectfully request an appointment for a interview with the examiner to resolve any remaining issues.

Respectfully submitted,



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